

ORDINANCE NO. 1031

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BEAUMONT
ADDING A NEW CHAPTER 9.40 "PSYCHOACTIVE BATH SALTS,
PSYCHOACTIVE HERBAL INCENSE AND OTHER SYNTHETIC DRUGS" TO
TITLE 9 OF THE BEAUMONT MUNICIPAL CODE PROHIBITING THE
DISTRIBUTION AND SALE OF CERTAIN INTOXICATING CHEMICAL
COMPOUNDS KNOWN AS SYNTHETIC DRUGS**

WHEREAS, the City Council of the City of Beaumont is committed to protecting the public health, safety, and welfare of the community, and to meet these goals it is necessary for the City Council to adopt measures, from time to time, to meet threats to the public health, safety, and welfare; and

WHEREAS, California State Law, through the recently enacted Health & Safety Code Sections 11357.5 and 11375.5, prohibits the sale or any other distribution of certain synthetic drugs often marketed as "bath salts" and/or "incense" in response to increased incidents, particularly among adolescents, resulting from the use of these drugs; and

WHEREAS, to avoid the threat to public health, safety, and welfare that would occur if these intoxicating synthetic chemical compounds were permitted in the City and to ensure the City complies with California State Law, the City finds that it is necessary to declare that an individual or business which possesses, provides, distributes or sells Synthetic Drugs as defined herein is a threat to public health, safety and welfare and, as such, is subject to the City's administrative, criminal and civil enforcement procedures (set forth in Chapter 1.16 and 1.17 of the Beaumont Municipal Code) and, in the case of a business, revocation of a business license (pursuant to Chapter 5.04 of the Beaumont Municipal Code); and

WHEREAS, the adoption of this chapter is consistent with Federal Law and Section 11375.5 of the Health and Safety Code of the State of California, as amended.

THE CITY COUNCIL OF THE CITY OF BEAUMONT ORDAINS AS FOLLOWS:

Section 1. The above recitals are all true and correct.

Section 2. The City Council finds as follows:

(a) Synthetic Drugs are extremely dangerous and are gaining popularity at an alarming rate among high school and college aged individuals, as well as among parolees and probationers. These drugs are widely available in stores throughout the City, despite the State of California's attempt to ban such drugs under Health & Safety Code sections 11357.5 (banning synthetic cannabinoid compounds), 11375.5 (banning synthetic stimulant compounds and derivatives) and 11401 (banning "analogs" of controlled substances) (collectively "State Synthetic Drug Laws") and the Federal Government's attempt to ban such drugs under the Controlled Substances Act (the "CSA") (21 USC §§ 81 et seq.). The City Council further finds that virtually every community in California has recognized the danger of Synthetic Drugs which have been documented to cause hallucinations, agitation, psychosis, aggression, suicidal and homicidal ideations, cannibalism and death.

(b) While State Synthetic Drug Laws and the CSA prohibit certain compounds that are used to create synthetic drugs, they are not comprehensive enough to eliminate the distribution and sale of all Synthetic Drugs in the City. Specifically, the Council finds that the makers of Synthetic Drugs continually alter the composition of the compounds in their products so as to not come under the purview of State Synthetic Drug Laws" the CSA and other laws and regulations attempting to prohibit the sale of Synthetic Drugs. In fact, products which plainly are being marketed for use as Synthetic Drugs are now being packaged with advertisements stating that the product does not contain the compounds specifically banned by State Synthetic Drug Laws. Thus, the City Council finds that in order implement an effective measure prohibiting the distribution and sale of Synthetic Drugs, it is necessary to look at all factors related to the sales and marketing of Synthetic Drugs. These factors will help City officials determine whether a product that does not come under the purview of State Synthetic Drug Laws or the CSA is nevertheless a Synthetic Drug because it is intended for recreational drug use.

(c) While the question of whether a given product is being distributed or sold for use as a recreational drug must be determined on a case-by-case basis, the City Council finds that the following evidentiary factors are helpful in determining whether a given product is in fact a Synthetic Drug:

(1) Marketing: Synthetic Drugs are rarely, if ever, suitable for their marketed uses. For example, a Synthetic Drug in the form of a powder might be marketed as "glass cleaner," even though the powder cannot reasonably be used to clean glass.

(2) Sales Location: Synthetic Drugs are typically sold in liquor stores, smoke shops and gas stations, yet Synthetic Drugs are marketed as products that are not typically sold by these businesses. For example, Synthetic Drugs are often marketed as bath salts, spice, incense, potpourri, skin treatments, cleaning products and plant food; however, these types of products are typically not sold in liquor stores, smoke shops or gas stations.

(3) Warning Labels: Synthetic Drugs often use warning labels such as: "not for human consumption" and "not for purchase by minors." Bona fide bath salts, incense, cleaning products and the like do not typically bear such labels. Of particular relevance are labels that indicate a given product does not contain chemical compounds banned by State Synthetic Drug Laws, which bona fide bath salts, incense, cleaning products and the like would not have any reason to advertise.

(4) Price: Synthetic Drugs are typically more expensive than products that are used for the Synthetic Drug's marketed use. For example, a Synthetic Drug marketed as "glass cleaner" might be priced at \$50.00 for an eighth of an ounce, while bona fide glass cleaner is priced at approximately \$5.00 for 26 ounces.

(5) Similarity to Illicit Street Drugs: Synthetic Drugs often resemble illicit street drugs and/or use brand names and packaging that are designed to make the product appear similar to illicit street drugs. For example, many Synthetic Drugs are sold as white powders packaged in vials (resembling cocaine) or dyed green to appear similar to marijuana. Additionally, brand names are often similar to street slang for illicit drugs and have no relation to the products that are purportedly being sold. These brand names are always changing, but include "Eight Ballz," "Spice," "Black Mamba," "K-2," "Puff," "Sugar Sticks," "Green Buddha," "Diable Botanical Incense," "Scooby Snax Potpourri," "Grape Ape Herbal Incense," "Aurora Incense," "Three Monkey Incense," "Mr. and Mrs. Marley," "Cloud 9 Incense," and a group of Synthetic Drugs marketed as from "The Spice Guy."

(d) An effective way to prevent and abate the health, safety and welfare concerns that exist as a result of the marketing, distribution and sale of Synthetic Drugs in manners that brazenly seek to circumvent State and Federal Law is through the enforcement of the City's administrative, criminal

and civil enforcement procedures (set forth in Chapter 1.16 and 1.17 of the Beaumont Municipal Code) and through the revocation of a business license (pursuant to Chapter 5.04 of the Beaumont Municipal Code). Because the chemical composition of Synthetic Drugs is constantly evolving, it is necessary to look at the circumstances surrounding the marketing (including price), distribution or sale of any given product to determine if the product is being provided, distributed or sold as a recreational drug. This ordinance shall not apply to any activity already regulated by Health and Safety Code Sections 11357.5, 11375.5, 11401, the CSA or any other applicable State or Federal law or regulation.

Section 3. The City Council of the City of Beaumont hereby adds Chapter 9.40 to Title 9 of the Beaumont Municipal Code to read in its entirety as set forth in Exhibit A attached.

Section 4. If any provision of this ordinance or the application thereof to any persons or circumstances is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

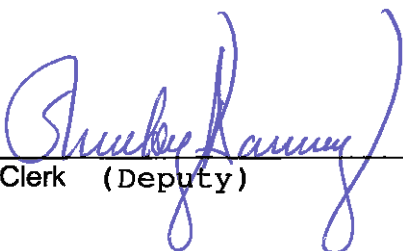
Section 5. The Mayor shall sign and the City Clerk shall certify passage and adoption of this Ordinance, and shall cause the same to be published and posted pursuant to the provisions of law in this regard, and this Ordinance shall take effect thirty (30) days after its final passage.

MOVED, AND PASSED, THIS 5th DAY OF Feb, 2013 by the following vote:

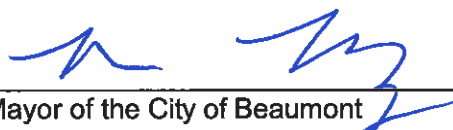
AYES: Mayor Berg, Council Members Castaldo, De Forge, Fox and Knight
NOES: None
ABSTAIN: None
ABSENT: None

MOVED, PASSED, and ADOPTED THIS 19th DAY OF Feb, 2013 by the following vote:

AYES: Mayor Berg, Council Members Castaldo, De Forge, Fox, and Knight
NOES: None
ABSTAIN: None
ABSENT: None



City Clerk (Deputy)



Mayor of the City of Beaumont

EXHIBIT A

PSYCHOACTIVE BATH SALTS, PSYCHOACTIVE HERBAL INCENSE AND OTHER SYNTHETIC DRUGS

SECTIONS:

9.40.010	Purpose and Intent
9.40.020	Definitions
9.40.030	Provision, Sale and/or Distribution of Synthetic Drugs Prohibited
9.40.040	Provision, Sale and/or Distribution of Substances Claimed or Represented to be Synthetic Drugs Prohibited
9.40.050	Possession of Synthetic Drugs Prohibited
9.40.060	Public Nuisance
9.40.070	Summary Abatement
9.40.080	Revocation of Business License
9.40.090	Penalties
9.40.100	Seizure of Evidence
9.40.110	Exclusions
9.40.120	Severability

9.40.010 Purpose and Intent. Recreational use of Psychoactive Bath Salts, Psychoactive Herbal Incense and similar products commonly known as "Synthetic Drugs" has been documented to cause hallucinations, agitation, psychosis, aggression, suicidal and homicidal ideations, cannibalism and death. While State and Federal laws and regulations prohibit some Synthetic Drugs, the makers of these drugs continually alter the composition of the compounds in their products so as to escape the purview of these laws and regulations. The purpose and intent of this Chapter is to provide the City with reasonable measures to address the dangers to the community posed by Synthetic Drugs that are not regulated by State or Federal Law.

9.40.020 Definitions.

A. "Business" such term, used alone, shall be held and construed to mean and include "business," "profession," "trade," "calling," "occupation," "show," "exhibition," or "game," and all kinds of calling carried on for profit or livelihood.

B. "Consume," "consuming" or "consumption" shall mean to ingest, inhale, inject, smoke or snort (insufflate).

C. "Distribute", "distributing" or "distribution" shall mean to furnish, give away, exchange, transfer, deliver or supply, whether for monetary gain or not.

D. "Person" shall include any natural person, business, firm, company, corporation, public corporation, club, trust, partnership, association and/or similar organization.

E. "Possess," "possessing" or "possession" shall mean to have for consumption, distribution or sale in one's actual or constructive custody or control, or under one's authority or power, whether such custody, control, authority and/or power be exercised solely or jointly with others.

F. "Provide," "providing" or "provision" shall mean offering to distribute, to distribute, offering to sell or sell a product or substance to any person.

G. "Psychoactive Bath Salts" shall mean any crystalline or powder product that contains a synthetic chemical compound that, when consumed, elicits psychoactive or psychotropic stimulant effects. The term "Psychoactive Bath Salts" includes without limitation:

(1) products that elicit psychoactive or psychotropic stimulant effects and contain any of the following intoxicating chemical compounds:

- (a) cathinone (2-amino-1-phenyl-1-propanone), 4-methylmethcathinone (2-methylamino-1-(4-methylphenyl)propan-1-one), 4-methoxymethcathinone (1-(4-methoxyphenyl)-2-(methylamino)propan-1-one), MDPV (3,4-methylenedioxy-N-methylamphetamine), methylenedioxypropylamphetamine (MDMA), methylone (3,4-methylenedioxy-N-methylcathinone), methcathinone (2-(methylamino)-1-phenyl-propan-1-one), flephedrone (4-fluoromethcathinone), 3-FMC (3-fluoromethcathinone), ethcathinone (2-ethylamino-1-phenyl-propan-1-one), butylone (J3-keto-N-methylbenzodioxolylbutanamine), o-PPP (o-pyrrolidinopropiophenone), MPPP (4'-methyl-a-pyrrolidinopropiophenone), MDPPP (3',4'-methylenedioxy-a-pyrrolidinopropiophenone), o-PVP (1-phenyl-2-(1-pyrrolidinyl)-1-pentanone) or naphyrone (1-naphthalen-2-yl-2-pyrrolidin-1-yl-pentan-1-one);
- (b) any derivative of the above listed intoxicating chemical compounds;
- (c) any synthetic substance and its isomers with a chemical structure similar to the above listed compounds;
- (d) any chemical alteration of the above listed intoxicating chemical compounds; or
- (e) any other substantially similar chemical structure or compound; and

(2) products that elicit psychoactive or psychotropic stimulant effects and are marketed under any of the following trade names, including but not limited to: Bliss, Blizzard, Blue Silk, Bonzai Grow, Charge Plus, Charlie, Cloud Nine, Euphoria, Hurricane, Ivory Snow, Ivory Wave, Lunar Wave, Ocean, Ocean Burst, Pixie Dust, Posh, Pure Ivory, Purple Wave, Red Dove, Scarface, Snow Leopard, Stardust, Vanilla Sky, White Dove, White Night and White Lightning.

The term "Psychoactive Bath Salts" shall not include any product, substance, material, compound, mixture or preparation that is specifically excepted by the California Uniform Controlled Substances Act ("UCSA") (Health & Safety Code §§ 11000 et seq.), listed in one of the UCSA's schedules of controlled substances (Health & Safety Code §§ 11053-11058), regulated by one of the UCSA's Synthetic Drug Laws (Health & Safety Code §§ 11357.5, 11375.5 and 11401), regulated by the Federal Controlled Substances Act (the "CSA") (21 USC §§ 81 et seq.) or approved by the Food and Drug Administration ("FDA").

H. "Psychoactive Herbal Incense" shall mean any organic product consisting of plant material that contains a synthetic stimulant compound that, when consumed, elicits psychoactive or psychotropic euphoric effects. The term "Psychoactive Herbal Incense" includes without limitation:

(1) products that elicit psychoactive or psychotropic euphoric effects and contain any of the following intoxicating chemical compounds:

- (a) cannabicyclohexanol (2-[(1 R,3S)-3-hydroxycyclohexyl]- 5-(2-methylnonan-2-yl)phenol), JWH-018 (naphthalen-1-yl-(1-pentylindol-3-yl)methanone), JWH-073 (naphthalen-1-yl-(1-butylindol-3-yl)methanone), JWH200((1-(2-morpholin-4-ylethyl)indol-3-yl)-naphthalen-1-yl)methanone), HU-210 ((6aR,10aR)- 9-(Hydroxymethyl)- 6,6-dimethyl- 3-(2-methyloctan-2-yl)-((6a,7,10,10a-tetrahydrobenzo [c]chromen- 1-01), CP 47,497 (2-[(1R,3S)-3hydroxycyclohexyl]- 5-(2-methyloctan-2-yl)phenol) CP 47,497 (2-[(1 R,3S)-3hydroxycyclohexyl]- 5-(2-methyloctan-2-yl}phenol) or AM-2201 (1-[(5fluoropentyl)-1 H-indol-3-yl]-(naphthalen-1-yl)methanone);
- (b) any derivative of the above listed intoxicating chemical compounds;
- (c) any synthetic substance and its isomers with a chemical structure similar to the above listed intoxicating chemical compounds;
- (d) any chemical alteration of the above listed intoxicating chemical compounds; or
- (e) any other substantially similar chemical structure or compound; and

(2) products that elicit psychoactive or psychotropic euphoric effects and are marketed under any of the following trade names: K2, K3, Spice, Genie, Smoke, PotPourri, Buzz, Spice 99, Voodoo, Pulse, Hush, Mystery, Earthquake, Black Mamba, Stinger, Ocean Blue, Stinger, Serenity, Fake Weed and Black Mamba.

The term "Psychoactive Herbal Incense" shall not include any product, substance, material, compound, mixture, or preparation that is specifically excepted by the UCSA (Health & Safety Code §§ 11000 et seq.), listed in one of the UCSA's schedules of controlled substances (Health & Safety Code §§ 11053-11058), regulated by one of the USCA's Synthetic Drug Laws (Health & Safety Code §§ 11357.5, 11375.5 and 11401), regulated by the CSA (21 USC §§ 81 et seq.) or approved by the FDA.

I. "Psychoactive or psychotropic stimulant effects" shall mean affecting the central nervous system or brain function to change perception, mood, consciousness, cognition and/or behavior in ways that are similar to the effects of cocaine, methylphenidate or amphetamines.

J. "Psychoactive or psychotropic euphoric effects" shall mean affecting the central nervous system or brain function to change perception, mood, consciousness, cognition and/or behavior in ways that are similar to the effects of cannabis.

K. "Sell," "selling" or "sale" shall mean to furnish, exchange, transfer, deliver or supply for monetary gain.

L. "Synthetic Drug" shall include Psychoactive Bath Salts and Psychoactive Herbal Incense, as those terms are defined hereinabove.

9.40.030 Provision, Sale and/or Distribution of Synthetic Drugs Prohibited.

(a) It is unlawful for any person to provide, distribute or sell any Synthetic Drug within the City of Beaumont.

(b) Merely disclaiming a Synthetic Drug as "not safe for human consumption" will not avoid the application of this Section.

9.40.040 Provision, Sale and/or Distribution of Substances Claimed or Represented to be Synthetic Drugs Prohibited.

(a) It is unlawful for any person to claim or represent that a product that person is providing, distributing or selling is a Synthetic Drug within the City of Beaumont.

(b) To determine if a person is claiming or representing that a product is a Synthetic Drug, the enforcing officer may consider any of the following evidentiary factors:

(1) The product is not suitable for its marketed use (such as a crystalline or powder product being marketed as "glass cleaner");

(2) The business providing, distributing or selling the product does not typically provide, distribute or sell products that are used for that product's marketed use (such as a liquor store selling "plant food");

(3) The product contains a warning label that is not typically present on products that are used for that product's marketed use (such as "not for human consumption," "not for purchase by minors," or "does not contain chemicals banned by section 11357.5");

(4) The product is significantly more expensive than products that are used for that product's marketed use (such as a half of a gram of a substance marketed as "glass cleaner" costing \$50.00);

(5) The product resembles an illicit street drug (such as cocaine, methamphetamine or marijuana); or

(6) The products name or packaging uses images or slang referencing an illicit street drug (such as "Eight Ballz" or "Green Buddha").

(c) Merely disclaiming a substance claimed or represented to be a Synthetic Drug as "not safe for human consumption" will not avoid the application of this Section.

9.40.050 Possession of Synthetic Drugs Prohibited. It is unlawful for any person to possess any Synthetic Drug within the City of Beaumont.

9.40.060 Public Nuisance.

(a) It is a public nuisance for any person to provide, distribute or sell any Synthetic Drug within the City of Beaumont.

(b) It is a public nuisance for any person to allow the provision, distribution or sale of any Synthetic Drug on property owned, controlled or managed by such person within the City of Beaumont.

(c) It is a public nuisance for any person to provide, distribute or sell any substance claimed or represented to be a Synthetic Drug within the City of Beaumont.

(d) It is a public nuisance for any person to allow the provision, distribution or sale of any substance claimed or represented to be a Synthetic Drug on property owned, controlled or managed by such person within the City of Beaumont.

(e) To determine if a person is claiming or representing that a substance or product is a Synthetic Drug, the enforcing officer may consider any of the evidentiary factors set forth in Section 9.1 00.040(b) of this Chapter.

9.40.070 Summary Abatement. Because the use of Synthetic Drugs has been documented to cause hallucinations, agitation, psychosis, aggression, suicidal and homicidal ideations, cannibalism and death, any violation of this Chapter presents a grave and imminent danger not only to the person consuming the Synthetic Drug, but also to the public at large. If the Code Enforcement Officer, based on the facts then known, determines that a violation of this Chapter presents an imminent danger or hazard or is imminently injurious to the public health or safety, then that violation is punishable by the summary abatement procedures set forth in Chapter 8.32 of this Code.

9.40.080 Revocation of Business License. No person holding a validly issued City business license and owning or operating a business in the City may use that business to provide, distribute or sell any Synthetic Drug or any substance claimed or represented to be a Synthetic Drug. A violation of this Section by the holder of a validly issued City business license, shall constitute grounds for modification, suspension and/or revocation of said license in accordance with the procedures set forth in Chapter 5.04 of this Municipal Code.

9.40.090 Penalties. In the discretion of the Enforcement Officer, any person violating the provisions of this Chapter shall be issued an Administrative Citation pursuant to Beaumont Municipal Code Chapter 1.17 or shall be guilty of an infraction pursuant to Beaumont Municipal Code Chapter 1.16. In either case, the amount of the fine shall be the appropriate amount set forth in Section 1.16.030 of this Code. Each such violation shall be deemed a separate offense as specified in Section 1.16.040.

Notwithstanding the above, a first offense may be charged and prosecuted as a misdemeanor, punishable by a fine of \$1,000.00, or six (6) months in jail, or both.

(c) **Separate Offense.** Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the ordinances of the City is committed, continued or permitted by any such person and he shall be punishable accordingly.

(d) **Civil Remedies Available; Remedies Cumulative.** In addition to the penalties provided in this Section, any condition caused or permitted to exist in violation of any of the provisions of this Chapter shall constitute a public nuisance and may be abated by the City by civil process by means of a restraining order, preliminary or permanent injunction or in any manner provided by law for the abatement of such nuisance. All remedies herein are cumulative and non-exclusive.

(e) **Administrative Citation.** In lieu of issuing a criminal citation, the City may issue an administrative citation pursuant to Chapter 1.17 of this Municipal Code, to any person responsible for committing, causing or maintaining a violation of this Chapter. Nothing in this Section shall preclude the City from also issuing a citation upon the occurrence of the same offense on a separate day.

(f) **Additional Penalties; Costs of Abatement.** Nothing in this Chapter shall preclude the City from pursuing the remedies made applicable hereto elsewhere in this Municipal Code or under State law, including but not limited to, as applicable, denial or revocation of certificates of occupancy and injunctive relief. In any administrative or criminal proceeding involving the abatement of a public nuisance, the City shall also be entitled to recover its full reasonable costs of abatement, including, but not limited to, investigation, analysis and prosecuting the enforcement against the guilty party, upon submission of proof of such cost by the City.

(g) **Public Nuisance Remedies.** The prevailing party in any proceeding associated with the abatement of a public nuisance as provided herein, shall be entitled to recovery of attorneys' fees incurred in any such proceeding, where the City has elected, at the initiation of that individual action or proceeding to seek recovery of its own attorneys' fees. In no action, administrative proceeding or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

9.40.100 Seizure of Evidence. Any product(s) or substance(s) possessed, provided, distributed or sold in violation of any provision of this Chapter shall be seized by the enforcing officers and removed and stored in accordance with law.

9.40.110 Exclusions.

(a) This Chapter shall not apply to drugs or substances lawfully prescribed or to intoxicating chemical compounds which have been approved by the Federal Food and Drug Administration or which are specifically permitted by California law, including without limitation, intoxicating chemical compounds that are specifically excepted by the California Uniform Controlled Substances Act (Health & Safety Code § 11000 et seq.). chemical compounds that are specifically excepted by the California Uniform Controlled Substances Act (Health & Safety Code § 11000 et seq.).

(b) This Chapter shall not apply to drugs or substances which are prohibited by State or Federal law, including without limitation, California Health and Safety Code Sections 11357.5, 11375.5, 11401 and the Federal Controlled Substances Act.

(c) This Chapter shall not be deemed to prescribe any act which is positively permitted, prohibited or preempted by any State or Federal law or regulation.

9.40.120 Severability. If any subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction or preempted by State or Federal legislation, such decision or legislation shall not affect the validity of the remaining portions of this Chapter. The City Council declares that it would have passed this Chapter and each and every subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to any such decision or preemptive legislation.